

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ING BANK N.V.,

Plaintiff,

- against -

M/V TEMARA, IMO No. 9333929, her
engines, tackle, equipment, furniture,
appurtenances, etc. *in rem*

Defendant.

Case No. 16 Civ. 95 (KBF)

ING BANK N.V.,

Plaintiff,

- against -

M/V VOGUE FIESTA, IMO No. 9168154, her
engines, tackle, equipment, furniture,
appurtenances, etc. *in rem*

Defendant.

Case No. 16 Civ. 2051 (KBF)

ING BANK N.V.,

Plaintiff,

- against -

M/V MARITIME KING, her engines, tackle,
equipment, furniture, appurtenances, etc. *in
rem*

Defendant.

Case No. 16 Civ. 3456 (KBF)

DECLARATION OF JAMES H. POWER

I, James H. Power, pursuant to 28 U.S.C. s. 1746, declare and state as follows:

1. I am an attorney with the firm Holland & Knight LLP, attorneys for the *in rem* defendants M/V Temara, M/V Voge Fiesta and M/V Maritime King (the “Vessels”) and their owners or charterers (having filed statements of interest and made a restricted appearance pursuant to Supplemental Admiralty Rule E(8) for the purposes of defending these claims). I make this declaration in opposition to ING’s Motion for Partial Summary Judgment filed in each of the above-captioned actions.

2. Attached as Exhibit 1 is a true and correct copy of a 400-page report entitled “Report to the creditors in the bankruptcy estate of the OW Bunker group concerning the investigations into possible legal liability.” The Report was issued in December 2015 as a result of the investigations of Søren Halling-Overgaard, the ad-hoc trustee appointed to investigate the possible existence of legal liability of O.W. Bunker & Trading A/S in bankruptcy, O.W. Bunker Supply & Trading A/S in bankruptcy, Dynamic Oil Trading Holding A/S in bankruptcy, and certain other O.W. Bunker entities. The Report was originally issued in Danish – Exhibit 2 is an official English translation of the Report. The Report is publicly available online at <http://www.nieuwsbladtransport.nl/Portals/0/docs/pdfs/rapportOWBunker.pdf>

3. Attached as Exhibit 2A and 2C are true and correct copies of the Declarations of Mr. Peter John Sibley MacDonald Eggers QC filed an action currently pending in the Southern District of New York before Judge Valerie Caproni, styled *Clearlake Shipping Pte Ltd. v. O.W. Bunker (Switzerland) SA, et al.*, Case No. 14-cv-9287 (S.D.N.Y.) (VEC) (Dkts. 170-31, 170-32, 190). In the *Clearlake* action, Mr. MacDonald Eggers directly responds to many of the same arguments submitted by ING’s English law expert, Mr. Antony Zacaroli QC. Mr. Christopher Hancock QC (whose declaration is being filed concurrently) references the Eggers declarations in

his opinion. For the sake of completeness, true and correct copies of the Zacaroli declarations submitted in the *Clearlake* action (Dkts. 178, 204) are also attached as Exhibit 2B and 2D.

4. Attached as Exhibit 3 is a true and correct copy of the transcript of the Deposition of Adrian Tolson, general manager and Vice President of O.W. Bunker North America, O.W. Bunker USA Inc and O.W. Bunker Panama S.A. at the time of the bankruptcy, or November 2014. The deposition of Mr. Tolson was taken in connection with two other O.W. Bunker related disputes currently pending in the Southern District of New York before Judge Valerie Caproni, styled, *O.W. Bunker USA Inc. v. M/V Bakkedal*, Case No. 15-cv-3988 (S.D.N.Y.) (VEC) and *Conti 149 Conti Guinea v. O.W. Bunker Panama S.A., et al.*, Case No. 14-cv-10089 (S.D.N.Y.) (VEC).

5. Attached as Exhibit 4 is a true and correct copy of a news article appearing in the trade publication Shipping Watch, entitled “OW liquidator aims to strip bank of the right to huge claims.” The article was published on August 2, 2016 and is available online at <http://shippingwatch.com/secure/carriers/article8887476.ece>.

6. Attached as Exhibit 5 is a true and correct copy of a news article appearing in the trade publication Shipping Watch, entitled “Singapore CEO burst into tears when he sent OW Bunker to its grave.” The article was published on September 12, 2016 and is available online at <http://shippingwatch.com/secure/suppliers/article8994147.ece>.

7. Attached as Exhibit 6 is a true and correct copy of a news article appearing in the trade publication Shipping Watch, entitled “Copenship estate hits OW Bunker with million dollar claim.” The article was published on August 4, 2016 and is available online at <http://shippingwatch.com/secure/carriers/article8893703.ece>.

I declare under penalty of perjury that the foregoing is true and correct.

New York, New York
September 15, 2016


James H. Power